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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:)	Docket No. TSCA-09-2011- 000 ⁰¹³
)	
Earth Protection Services, Inc.)	CONSENT AGREEMENT
)	AND FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 and 22.18
Respondent)	
)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA Region IX") and Earth Protection Services, Inc. ("Respondent") agree to settle this case initiated under the Toxic Substances Control Act ("TSCA" or the "Act"), 15 U.S.C. §§ 2601 et seq., and consent to the entry of this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

2. The Complainant is the Director of the Waste Division, EPA Region IX. The Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to bring this action under TSCA. In turn, the Regional Administrator of EPA Region IX further delegated the authority to bring this action under TSCA to the Director of the Waste Division.
3. Respondent is an Arizona corporation that owns and operates a recycling facility (the "Facility") that transports, consolidates, stores and processes lamps, ballasts, batteries, and electronic wastes containing polychlorinated biphenyls ("PCBs") at 10 S. 48th Avenue, Suite 4, Phoenix, Arizona 85043.

B. STATUTORY AND REGULATORY AUTHORITIES

4. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), establishes requirements for handling and disposal of PCBs.
5. EPA has issued comprehensive regulations governing manufacturing, processing, distribution, and disposal of PCBs at 40 C.F.R. Part 761. Part 761 applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items.
6. Under 40 C.F.R. § 761.3, "PCB" or "PCBs" means "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. . . ."
7. Under 40 C.F.R. § 761.3, "PCB Items" means "any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has a part of it any PCB or PCBs."
8. Under 40 C.F.R. § 761.3, "PCB Container" means "any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has

been in direct contact with PCBs.”

9. Under 40 C.F.R. § 761.3, “PCB-contaminated” means “a non-liquid material containing PCBs at concentrations \geq ppm [parts per million] but $<$ 500 ppm; a liquid material containing PCBs at concentrations \geq 50 ppm but $<$ 500 ppm or where insufficient liquid material is available for analysis, a non-porous surface having a surface concentration $>$ 10 μg [micrograms]/100 cm^2 [square centimeter] but $<$ 100 $\mu\text{g}/100 \text{cm}^2$, as measured by a standard wipe test. . . .”
10. Under 40 C.F.R. § 761.40(a)(1), all PCB Containers in existence on or after July 1, 1978 must be marked with PCB labeling illustrated at 40 C.F.R. § 761.45.
11. Under 40 C.F.R. § 761.207(a), a generator who relinquishes control over PCB wastes by transporting, or offering for transport by his own vehicle or by a vehicle owned by another person, PCB waste for commercial off-site storage or off-site disposal shall prepare a manifest on EPA Form 8700-22, and if necessary, a continuation sheet.
12. Under 40 C.F.R. § 761.207(a)(2), the generator who relinquishes control over PCB wastes must prepare a manifest that specifies for each PCB Article Container or PCB Container, the unique identifying number, type of PCB waste (e.g., soil, debris, small capacitors), earliest date of removal from service for disposal, and weight in kilograms of the PCB waste contained.
13. Under 40 C.F.R. § 761.208(b)(1), a transporter shall not accept PCB waste from a generator unless it is accompanied by a manifest signed by the generator.

C. ALLEGED VIOLATIONS

14. Respondent is a “person” as that term is defined by 40 C.F.R. § 761.3.
15. On or about March 18, 2008, EPA enforcement officers inspected the Facility.

16. During the March 18, 2008 inspection, the EPA enforcement officers observed eight 55-gallon drums stored in the PCB ballast processing area of the Facility. The drums contained recovered metals from the processing of fluorescent light ballasts and were marked "Non-PCB."
17. During the March 18, 2008 inspection, the EPA enforcement officers collected random metal samples from two of the eight drums marked "Non-PCB"; subsequent testing indicated that all of the samples contained PCBs in concentrations ranging from 16 to 5,700 $\mu\text{g}/100 \text{ cm}^2$. The two drums are "PCB Containers" within the meaning of 40 C.F.R. § 761.3.
18. On or about March 18, 2008, Respondent failed to label the two PCB Containers at the Facility with the required PCB labeling in violation of 40 C.F.R. § 761.40(a)(1).
19. Following the March 18, 2008 inspection, EPA requested and received copies of the manifests for the incoming and outgoing PCB wastes at the Facility in 2007.
20. EPA review of the Facility records indicated that the manifests for the PCB wastes shipped from the Facility in 2007 lacked the removal from service dates or expressed the weight of the PCB wastes in pounds rather than kilograms.
21. In or about 2007, Respondent failed to prepare manifests that specified for each PCB Article Container or PCB Container the earliest date of removal from service for disposal and weight in kilograms of the PCB waste contained, in violation of 40 C.F.R. § 761.207(a)(2).
22. EPA review of the Facility records indicated that the Facility accepted PCB wastes for transport without manifests signed by the generators in 2007.
23. In or about 2007, Respondent accepted PCB wastes for transport without manifests signed by the generators in violation of 40 C.F.R. § 761.208(b)(1).

D. RESPONDENT'S ADMISSIONS

24. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.D of this CAFO; (iv) waives any right to contest the allegations contained in the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

25. Respondent hereby consents to the assessment of a civil penalty in the amount of NINETEEN THOUSAND TWO HUNDRED AND TEN DOLLARS (\$19,210) as full, final, and complete settlement of the civil claims alleged in Section I.C of the CAFO. The civil penalty shall be paid within thirty (30) days of the effective date of this CAFO and according to the terms of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk

Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

David H. Kim
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

26. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
27. If Respondent fails to pay the civil administrative penalty specified in Paragraph 25 of this CAFO within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA the stipulated penalty of \$22,000 instead of the specified civil administrative penalty. Complainant also reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CAFO or with TSCA and the implementing regulations.
28. In addition, failure to pay the civil administrative penalty may lead to any or all of the following actions:
 - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
 - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the

debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in Paragraph 16. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. RETENTION OF RIGHTS

29. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in the CAFO.
30. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

G. ATTORNEYS' FEES AND COSTS

31. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

H. EFFECTIVE DATE

32. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

I. BINDING EFFECT

33. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

34. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT EARTH PROTECTION SERVICES, INC.:

September 2, 2011
DATE

John M. Chilcott
By: JOHN M CHILCOTT
Title: PRESIDENT
Address: 2737 E ARIZONA BILTMORE CIRCLE
PHOENIX, AZ 85016

FOR COMPLAINANT EPA REGION IX:

9/23/11
DATE

Jeffrey Scott
Jeffrey Scott
Director
Waste Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

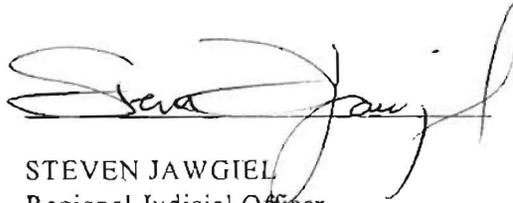
II. FINAL ORDER

EPA Region IX and Earth Protection Services, Inc. having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2011-~~000~~⁰⁰¹³) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$19,210 and otherwise comply with the terms set forth in the Consent Agreement. ✓

09/27/11

DATE



STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order with **Earth Protection Services, Inc. (Docket #: TSCA-09-2011-0013)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

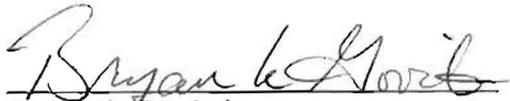
A copy was mailed via CERTIFIED MAIL to:

Matthew L. Rojas, Esq.
Squire, Sanders & Dempsey, LLP
1 E. Washington Street, Ste. 2700
Phoenix, AZ 85004

CERTIFIED MAIL NUMBER: 7010-2780-0000-5246-7485

An additional copy was hand-delivered to the following U.S. EPA case attorney:

David Kim, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/28/11
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

CERTIFIED MAIL NO: 7010-2780-0000-5246-7485
RETURN RECEIPT REQUESTED

SEP 28 2011

John Chilcott
President, VJ2C, Inc.
(former President of Earth Protection Services, Inc.)
2737 E. Arizona Biltmore Circle #4
Phoenix, AZ 85018

Re: In the matter of Earth Protection Services, Inc.

Dear Mr. Chilcott:

Enclosed is a copy of the fully executed Consent Agreement and Final Order ("CA/FO") that contains the terms of the settlement that Earth Protection Services, Inc. ("EPSI") reached with the United States Environmental Protection Agency ("U.S. EPA").

This CA/FO sets out the terms for resolution of the Toxic Substances Control Act (TSCA) administrative civil penalty action against EPSI for alleged violations at the EPSI facility in Phoenix, Arizona. As described in the terms of the enclosed CA/FO, payment by EPSI of the penalty identified in Section E of the enclosed CA/FO is necessary to conclude this matter.

EPSI's full compliance with the payment terms of this CA/FO will close this case. If you have any questions regarding the TSCA requirements and regulations governing your operations, or the rules which govern the proceedings terminated by the enclosed document, please contact James Polek of my staff at (415) 972-3185, or David Kim, in the Office of Regional Counsel, at (415) 972-3882.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott".

Jeff Scott, Director
Waste Management Division

Enclosures

cc: David Kim, EPA ORC-2
James Polek, EPA WST-3